

1 Christina N. Goodrich (SBN 261722)  
2 Christina.goodrich@klgates.com  
3 Cassidy T. Young (SBN 342891)  
4 Cassidy.young@klgates.com  
5 K&L Gates LLP  
6 10100 Santa Monica Boulevard  
7 Eighth Floor  
8 Los Angeles, California 90067  
9 Telephone: +1 310 552 5000  
10 Facsimile: +1 310 552 5001

11 [Additional counsel on signature page]

12 **Attorneys for Plaintiff Entropic  
13 Communications, LLC**

14 **UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA**

16 ENTROPIC COMMUNICATIONS,  
17 LLC,

18 Plaintiff,

19 v.

20 DISH NETWORK CORPORATION,  
21 *et al.*,

22 Defendants.

23 Case No. 2:23-cv-1043-JWH-KES  
24 (Lead Case)

25 Case No. 2:23-cv-1047-JWH-KES  
26 (Related Case)

27 Case No. 2:23-cv-1048-JWH-KES  
28 (Related Case)

29 Case No. 2:23-cv-5253-JWH-KES  
30 (Related Case)

31 [Assigned to the Honorable John W.  
32 Holcomb]

33 **ENTROPIC COMMUNICATIONS,  
34 LLC'S REPLY IN SUPPORT OF  
35 MOTION TO DISMISS COX  
36 DEFENDANTS' AMENDED  
37 COUNTERCLAIMS PURSUANT TO  
38 RULE 12(b)(6)**

39 **REFERRED TO SPECIAL MASTER**

40 **Previously-set hearing, now vacated**

41 Hearing Date: March 29, 2024

42 Hearing Time: 9:00 a.m.

43 Courtroom: 9D

44 Plaintiff,

45 v.

46 COX COMMUNICATIONS, INC., *et*  
47 *al.*,

48 Defendants.

49 **REDACTED VERSION OF DOCUMENT PROPOSED TO BE  
50 FILED UNDER SEAL**

51 **ENTROPIC'S REPLY IN SUPPORT OF MOTION TO DISMISS COX  
52 DEFENDANTS' AMENDED COUNTERCLAIMS**

1 ENTROPIC COMMUNICATIONS,  
2 LLC,

3 Plaintiff,

4 v.

5 COMCAST, *et al.*,

6 Defendants.

7

8

9 ENTROPIC COMMUNICATIONS,  
10 LLC,

11 Plaintiff,

12 v.

13 DIRECTV, LLC, *et al.*,

14 Defendants.

## **TABLE OF CONTENTS**

I.	INTRODUCTION .....	4
II.	ARGUMENT .....	5
A.	Cox has not plausibly alleged a breach of the IPR Policy because MaxLinear was not bound to retain a licensing right. ....	5
B.	Cox has not plausibly alleged a breach or harm from any breach related to RAND licensing obligations.....	10
C.	Cox has not plausibly alleged that it is entitled to relief based on the alleged disclosure of confidential MoCA documents.....	12
1.	Cox has not plausibly alleged that MaxLinear violated confidentiality obligations.....	12
2.	Cox has not plausibly alleged any specific acts by Entropic designed to induce MaxLinear to breach its confidentiality obligations.....	13
D.	The confidentiality claims do not “depend[] on the resolution of a substantial question of federal patent law.” .....	15
III.	CONCLUSION .....	16

1  
2  
3  
**TABLE OF AUTHORITIES**

		Page(s)
4	<b>Cases</b>	
5	<i>Alfred E. Mann Foun. For Sci. v. Cochlear Corp.</i> , 604 F. 3d 1354 (Fed. Cir. 2010) .....	7
6	<i>Datatreasury Corp. v. Wells Fargo &amp; Co.</i> , 552 F.3d 1368 (Fed. Cir. 2008) .....	6
7	<i>Demalco Ltd. v. Feltner</i> , 588 F. Supp. 1277 (S.D.N.Y. 1984) .....	11
8	<i>Ericsson, Inc. v. D-Link Sys., Inc.</i> , 773 F.3d 1201 (Fed. Cir. 2014) .....	11
9	<i>First Nat. Bank v. Continental Illinois Nat. Bank</i> , 933 F.2d 466 (7th Cir. 1991) .....	11, 12
10	<i>Fortinet, Inc. v. Forescout Techs., Inc.</i> , No. 20-cv-03343-EMC, 2021 WL 5565836 (N.D. Cal. Nov. 29, 2021) .....	15
11	<i>Haskell v. Santander Bank, N.A.</i> , No. 17-cv-11288, 2018 WL 1750459 (D. Mass. Apr. 10, 2018) .....	11
12	<i>Hilton v. McNitt</i> , 49 Cal. 2d 79 (Cal. 1957) .....	7
13	<i>Kor. Supply Co. v. Lockheed Martin Corp.</i> , 131 Cal. Rptr. 2d 29 (2003) .....	14
14	<i>MacDonald &amp; Kruse, Inc. v. San Jose Steel Co.</i> , 29 Cal. App. 3d 413 (Cal. Ct. App. 1972) .....	7
15	<i>Mehul's Inv. Corp. v. ABC Advisors, Inc.</i> , 130 F. Supp. 2d 700 (D. Md. 2001) .....	7
16	<i>Moore v. Apple, Inc.</i> , 73 F. Supp. 3d 1191 (N.D. Cal. 2014) .....	14

1	<i>Name.Space, Inc. v. Internet Corp. for Assigned Names &amp; Numbers,</i> 795 F.3d 1124 (9th Cir. 2015).....	11
3	<i>QuickLogic Corp. v. Konda Techs., Inc.,</i> 618 F. Supp. 3d 873 (N.D. Cal. 2022).....	13
5	<i>Salesbrain, Inc. v. AngelVision Technologies,</i> No. 12-cv-5026, 2013 WL 1191236 (N.D. Cal. Mar. 21, 2013).....	10, 13
7	<i>Sicom Systems, Ltd. v. Agilent Technologies, Inc.,</i> 427 F.3d 971 (Fed. Cir. 2005).....	7
8	<b>Statutes</b>	
10	Federal Rule of Civil Procedure 12 .....	15

11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

## I. INTRODUCTION

Cox’s Counterclaims rely on facially erroneous readings of the MoCA IPR Policy and of the MoCA confidentiality protections. Because Cox’s Counterclaims are contrary to the plain terms of the IPR Policy and confidentiality requirements, they fail as a matter of law and must be dismissed.

Fatally, Cox wrongly asserts that the IPR Policy obligated MaxLinear to retain, for all time, the right to grant licenses to any essential patent claims. In truth, the IPR Policy expressly *permits* parties to assign their patent rights to successors-in-interest. To ensure that RAND licenses will continue to be offered after assignment, the obligation to license on RAND terms travels with the patent and binds the new owner: “the licensing obligations under this IPR Policy are intended to be binding (e.g., as encumbrances) on all successors-in-interest.” IPR Policy § 5.1.2. And it confirms this is so regardless of the specific language used to assign essential patents. *Id.* The IPR Policy does not require the original patent owner to retain the right to license because the assurance that RAND licenses will continue to be available is that the licensing obligations bind the *successors-in-interest*.

1        Likewise, Cox does not plausibly allege that the MoCA standards documents  
2 in question were subject to confidentiality obligations, nor that Entropic committed  
3 intentional acts designed to induce MaxLinear to violate any such obligations. The  
4 documents state on their face that they issued in 2013. The applicable  
5 confidentiality protections expired [REDACTED]. Therefore, no confidentiality  
6 obligations were in effect when Entropic received the documents from MaxLinear  
7 in 2021. As a matter of law there can be no violation of a non-existent obligation.  
8 And even if Cox's pleadings were somehow sufficient (which they are not), the  
9 Court should decline to exercise jurisdiction over them because the confidentiality  
10 claims do not depend on any question of federal patent law.

11       Therefore, Cox is unable to make a plausible showing that it is entitled to  
12 relief, and the Court should dismiss the Counterclaims against Entropic.

13 **II. ARGUMENT**

14       Cox seeks a declaration that the transfer of patents to Entropic was void  
15 (Count II) and asserts a claim of tortious interference with contract (Count III).  
16 These counterclaims hinge on two erroneous theories: (1) that MaxLinear breached  
17 the IPR Policy by transferring the Asserted Patents to Entropic without retaining for  
18 itself the right to grant licenses; and (2) that MaxLinear breached confidentiality  
19 obligations by disclosing MoCA standards documents to Entropic. Because neither  
20 theory is properly pled, Counts II and III of Cox's Counterclaims fail as a matter of  
21 law.

22       **A. Cox has not plausibly alleged a breach of the IPR Policy because  
23 MaxLinear was not bound to retain a licensing right.**

24 Cox cannot plausibly allege a breach of the IPR Policy because the  
25 unambiguous terms of the Policy show that MaxLinear was not required to retain  
26 the right to grant licenses to essential patents. Cox concedes that the IPR Policy  
27 expressly permits assignment of essential patent claims. *See* Opp. Br. at 19; *see also*

1 IPR Policy § 5.1.2. Cox does not dispute that the IPR Policy’s licensing obligations  
2 “run with the patent[s]” under *Datatreasury*. *See Datatreasury Corp. v. Wells*  
3 *Fargo & Co.*, 552 F.3d 1368, 1372 (Fed. Cir. 2008); *see also* Opp. Br. at 19–22.  
4 Instead, Cox takes the absurd position that MaxLinear was allowed to assign the  
5 Asserted Patents, but still had to “retain the right to grant any licenses for essential  
6 patents.” Opp. Br. at 19. This theory fails on several counts.

7 First, Cox’s interpretation directly contradicts the plain terms of the IPR  
8 Policy, specifically the provision that expressly governs “Transfer of Essential  
9 Patent Claims.” *See* IPR Policy § 5.1.2. That Policy explicitly states, in full:

10 **5.1.2 Transfer of Essential Patent Claims.** Any sale, **assignment** or  
11 other transfer by an Alliance Party or its Affiliates to an unaffiliated  
12 third party of an Essential Patent Claim, or any patent or patent  
13 application that reasonably may contain or result in an Essential Patent  
14 Claim, shall be made subject to the terms in this IPR Policy. **An Alliance**  
15 **Party may choose the manner in which it complies with this Section**  
16 **5.1.2**, provided that any agreement for transferring or assigning  
17 Essential Patent Claims, or any patent or patent application that  
18 reasonably may contain or result in an Essential Patent Claim, **includes**  
19 **a provision that such transfer or assignment is subject to existing**  
20 **licenses and obligations to license** imposed on the Alliance Party by  
21 this Agreement and the Alliance Bylaws, and that the transferee will  
22 similarly include appropriate provisions in the event of future transfers  
23 with the goal of **binding each successor-in-interest**. Moreover, the  
24 **licensing obligations under this IPR Policy are intended to be binding**  
25 (e.g., as encumbrances) **on all successors-in-interest** regardless of  
26 whether such provisions are included.

1 *Id.* (emphases added). Section 5.1.2 thus contemplates that (1) an Alliance Party  
2 can choose how to comply with Section 5.1.2; and (2) the licensing obligations in  
3 Section 5.1.2 are binding on “successors-in-interest” upon transfer, not the Alliance  
4 Party itself. The explicit reference to “successors-in-interest” confirms that the IPR  
5 Policy contemplates successors stepping into the shoes of an Alliance Party and  
6 assuming the obligations therein. *See, e.g., Mehul’s Inv. Corp. v. ABC Advisors, Inc.*, 130 F. Supp. 2d 700, 706 (D. Md. 2001). Further, Section 5.1.2 is specifically  
7 directed to transfers of patent rights and obligations. This is the section that governs  
8 transfers, not the other sections cited by Cox which relate to warranties and the like.  
9 *See MacDonald & Kruse, Inc. v. San Jose Steel Co.*, 29 Cal. App. 3d 413, 421 (Cal.  
10 Ct. App. 1972) (“where a general and a particular provision of a written instrument  
11 are inconsistent, the particular controls the general”). The plain language of Section  
12 5.1.2 squarely rejects Cox’s interpretation that an Alliance Party is forever bound to  
13 the licensing obligations and cannot assign them. Cox’s counterclaims fail for this  
14 reason alone.

15         Second, Cox’s interpretation contradicts basic principles of patent law.  
16 Section 5.1.2 expressly contemplates an “assignment” of IP property rights.  
17 “Assignment” in the patent context refers to the transfer of “all substantial rights” in  
18 the patent. *See Alfred E. Mann Foun. For Sci. v. Cochlear Corp.*, 604 F. 3d 1354,  
19 1359 (Fed. Cir. 2010). Part of those substantial rights include the right to exclude or  
20 license others. *See, e.g., Sicom Systems, Ltd. v. Agilent Technologies, Inc.*, 427 F.3d  
21 971, 979 (Fed. Cir. 2005). The parties to the IPR Policy are presumed to understand  
22 the legal import of terms like “assignment” as used in their agreement. *See generally Hilton v. McNitt*, 49 Cal. 2d 79, 82 (Cal. 1957) (parties and their  
23 attorneys presumed to know the law applicable to such agreements). Thus, the IPR  
24 Policy contemplates an “assignment” of patents that would permit Alliance  
25 Members to assign “all substantial rights,” including the right to grant licenses.  
26  
27

1        If the IPR Policy were intended to force Alliance Parties to retain the right to  
2 grant licenses and bar them from ever transferring that right, then the IPR Policy  
3 would have far different language. For one, it would never have referred to  
4 “assignments.” Further, it would have had language explaining the scope of that  
5 perpetual licensing right, such as whether that right is non-exclusive, or whether the  
6 Alliance Party needs to obtain consent from the new patent owner before exercising  
7 that right, or whether the Alliance Party is required to give the new patent owner  
8 notice and an opportunity to object. No such provisions are present, and for good  
9 reason: the IPR Policy does not, and was never intended to, force Alliance Parties  
10 to retain a licensing right for all time. Instead, Section 5.1.2 permits an *assignment*  
11 that conveys all rights and obligations in the patents covered by the IPR Policy.  
12 Because the licensing obligations travel with the patents to the successor, the IPR  
13 Policy has no need to force the original owner to license the patents as well.

14        Third, Cox’s reading of Section 4 is untenable and improperly creates  
15 conflict with other provisions of the IPR Policy. Cox turns to Section 4.1.2 to  
16 fabricate a “perpetual licensing right.” But that section says nothing about a  
17 licensing right existing in perpetuity. Rather, it is a standard warranty provision by  
18 which signatories warranted that they had the power and authority to carry out the  
19 IPR Policy:

20        Each Alliance Party represents, warrants and covenants to the Alliance  
21 and to other Alliance Parties that it has the power and authority to bind  
22 itself and all of its Affiliates to the obligations contained herein,  
23 including without limitation, the obligation to grant patent licenses as  
24 set forth in this IPR Policy.

25 IPR Policy § 4.1.2. This section simply confirms that signatories had the power to  
26 bind both themselves and their Affiliates under the IPR Policy when they signed it.  
27 Nowhere does it create an obligation to *retain* licensing rights to patents for all

1 time. To the contrary, Section 5.1.2 is clear that rights in essential patents—  
2 including licensing obligations—can be assigned or transferred to third parties.

3 Section 4.1.1 further confirms that the provisions of Section 4 cannot be read  
4 to conflict with Section 5.1.2, as Cox seeks to do. Section 4.1.1 states that “[a]ll  
5 right, title and interest in and to Alliance Party Intellectual Property shall be owned  
6 exclusively by the Alliance Party(ies) who developed the Intellectual Property...”  
7 IPR Policy § 4.1.1. Under Cox’s reading of Section 4—*i.e.*, that this section recites  
8 an obligation which extends in perpetuity—there could never be a transfer of  
9 intellectual property to a third party because IP could only be owned by an Alliance  
10 Party. This is very clearly wrong, as Section 5.1.2 confirms that transfers to “third  
11 parties” are permissible and expressly contemplated. Cox’s reading of Section 4  
12 creates conflict with Section 5.1.2, and thus is legally erroneous and must be  
13 rejected.

14 The unreasonableness of Cox’s position is underscored by its self-  
15 contradictory arguments. In its pleading, Cox alleged that Section 4.1.1 “required  
16 that any such essential patents shall be owned by an ‘Alliance Party’” for all time.  
17 DE 276 (“Countercl.”) ¶ 547; *see also* ¶ 581 (alleging that MaxLinear “promise[d]  
18 that it would exclusively own the relevant intellectual property necessary to the  
19 MoCA standards”). Perhaps realizing that these assertions are flatly contrary to the  
20 assignment provision of Section 5.1.2, Cox changed its tune in its opposition brief.  
21 There, Cox tries to pivot to an interpretation of the IPR Policy that no longer  
22 required MaxLinear to own the patents in perpetuity, but still required it to make a  
23 choice: “continue to own the relevant patents” *or else* retain the right to grant  
24 licenses. Opp. at 19. This “choice” is nowhere in the IPR Policy and is inconsistent  
25 with Cox’s own position that Section 4 recites “present and future” promises that  
26 apply for all time. *Id.* at 20. Cox has drifted so far from the plain text of the IPR  
27 Policy that Cox itself cannot keep its contorted views consistent.

28

1       Here, the terms of the IPR Policy are unambiguous and should be given their  
2 plain meaning. *See Salesbrain, Inc. v. AngelVision Technologies*, No. 12-cv-5026,  
3 2013 WL 1191236, at \*12 (N.D. Cal. Mar. 21, 2013) (“Where the terms of the  
4 contract are unambiguous, a court must enforce the contract according to its plain  
5 meaning”). Under those plain terms, MaxLinear had the right and the choice to  
6 assign its licensing obligations to a third party (Entropic), and those obligations  
7 would flow with the assignment. Cox’s Counterclaims rely on a legally erroneous  
8 reading of the IPR Policy and should be dismissed with prejudice.

9           **B. Cox has not plausibly alleged a breach or harm from any breach  
10 related to RAND licensing obligations.**

11          Cox’s Counterclaims should also be dismissed because they fail to allege a  
12 breach, or any harm from an alleged breach, of the licensing obligations in the IPR  
13 Policy. In its Counterclaims, Cox alleges that Entropic induced MaxLinear to  
14 breach the requirement to offer a RAND license. Countercl. ¶ 584. According to  
15 Cox, *current* members must submit a “written request” under Section 5.1, whereas  
16 *former* members may request a license in any form they want, including verbally.  
17 *See* Opp. Br. at 10. Cox again misreads the IPR Policy. The Policy specifies that  
18 former members may request a license “under Section 5.1,” IPR Policy § 7.1, and  
19 Section 5.1 specifies that requests must be in writing. *See id.* § 5.1.1. Section 7.1 in  
20 no way grants more rights to *former* members than to *current* members. To the  
21 contrary, the rights of former members under Section 7.1 are cabined by Section  
22 5.1, and then those rights are further limited by precluding former members from  
23 requesting licenses on standards adopted after the member left the MoCA Alliance.  
24 *Id.* § 7.1. Cox’s misreading of Sections 5.1 and 7.1 further demonstrate that its  
25 allegations of breach are contrary to the plain terms of the IPR Policy and should be  
26 dismissed.

27  
28

1       Second, Cox argues that it does not matter whether the parties successfully  
2 breached the policy. What matters, according to Cox, is that Entropic and  
3 MaxLinear “affirmatively sought” to unencumber the patents. *See Opp. Br.* at 21.  
4 But an **attempted** breach of contract is not a breach of contract. *See generally First*  
5 *Nat. Bank v. Continental Illinois Nat. Bank*, 933 F.2d 466, 469 (7th Cir. 1991)  
6 (finding no injury where defendant attempted unsuccessfully to breach the  
7 contract); *see also Haskell v. Santander Bank, N.A.*, No. 17-cv-11288, 2018 WL  
8 1750459, at \*1 (D. Mass. Apr. 10, 2018) (“there has been no breach of any alleged  
9 promise not to foreclose on the property, and there is no cause of action for an  
10 attempted breach of an agreement”); *Demalco Ltd. v. Feltner*, 588 F. Supp. 1277,  
11 1280 (S.D.N.Y. 1984) (“plaintiff alleges not a breach of contract but an attempted  
12 breach”). Without a breach, there can be no claim for tortious interference. *See*  
13 *Name.Space, Inc. v. Internet Corp. for Assigned Names & Numbers*, 795 F.3d 1124,  
14 1133 (9th Cir. 2015). And, in any event, the IPR Policy is explicit that licensing  
15 obligations are binding on successors-in-interest “regardless of whether [specific  
16 provisions about the encumbrances] are included.” IPR Policy § 5.1.2. Therefore,  
17 Cox has failed to plead breach of contract.

18       Lastly, Cox’s counterclaim pleads that “Cox is entitled to receive” a RAND  
19 offer “from MaxLinear, and only MaxLinear.” (Countercl. ¶ 579.) But it pleads no  
20 harm from receiving a RAND offer from Entropic instead. Cox argues in its brief  
21 that “the identi[t]y of MaxLinear as counterparty would result in far different  
22 outcomes on RAND rates.” Opp Br. 26–27. Cox never pleads such a harm, let alone  
23 explains what harm comes from those purportedly “different outcomes.” Further,  
24 Cox’s assertion is legally wrong: a RAND offer must be non-discriminatory, and  
25 thus “the commercial relationship between the licensor and licensee is irrelevant.”  
26 *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1230–31 (Fed. Cir. 2014). Cox’s  
27  
28

1 speculation that it could get a more favorable RAND offer from MaxLinear as  
2 opposed to Entropic is contrary to law and cannot state a cognizable harm.

3 **C. Cox has not plausibly alleged that it is entitled to relief based on  
4 the alleged disclosure of confidential MoCA documents.**

5 Cox has not plead a viable tortious interference claim based on the alleged  
6 breach of disclosure of confidential documents. What Cox pleads suffers from two  
7 critical deficiencies. *First*, Cox does not plausibly allege there was an actual breach  
8 of any confidentiality obligations because the pleadings facially show that any such  
9 confidentiality obligations had already expired. Without a breach there is no  
10 tortious interference. *Second*, Cox's pleadings are devoid of any specific allegations  
11 as to how Entropic induced MaxLinear to breach its confidentiality obligations.  
12 Either one of these deficiencies is fatal to Cox's tortious interference claim based  
13 on the alleged disclosure of confidential documents.

14 **1. Cox has not plausibly alleged that MaxLinear violated  
15 confidentiality obligations.**

16 Cox alleges that MaxLinear violated confidentiality obligations, specifically  
17 the confidentiality obligations set forth in Section 5 of Cox's MoCA membership  
18 agreement.<sup>1</sup> *See* DE 276 ("Countercl.") ¶¶ 535, 546. [REDACTED]

19 [REDACTED]  
20 [REDACTED] *See* DE 336 ("Motion") at 15. The  
21 "confidential" MoCA standards documents that were allegedly shared with  
22 Entropic all purport to have issued no later than November 2013, meaning that any  
23 Cox confidential information published therein would have necessarily been  
24 "disclosed" by Cox before that date. By the time Entropic came onto the scene in  
25

26<sup>1</sup> Specifically, Cox alleges that MaxLinear signed a similar membership agreement,  
27 which bound MaxLinear to the same confidentiality terms as set forth in Cox's  
28 membership agreement. *See* Countercl. ¶ 535; *see also* ¶ 546 (alleging  
that MaxLinear "agreed to the same or equivalent confidentiality terms" as  
described in Section 5 of Cox's membership agreement.).

1 2021, any duty to keep that information confidential was well past its expiration  
2 date. *See* 2:23-cv-1047, DE 1 ¶ 33 (Entropic formed in 2021).

3 Cox dismisses this fundamental failure to state a claim as mere “timing  
4 details.” *See* Opp. Br. at 22. Not so. The term of a contract obligation, and  
5 expiration thereof, is a core issue, not a detail. Courts dismiss claims of breach  
6 where the confidentiality requirements have expired on their own terms. *See*  
7 *Salesbrain, Inc. v. AngelVision Tech.*, No. 12-cv-05026, 2013 WL 1191236, at  
8 \*12–14 (N.D. Cal. Mar. 21, 2013) (dismissing claim for breach of NDA based on  
9 Court’s finding that the NDA obligations expired before the allegedly breaching  
10 conduct); *see also QuickLogic Corp. v. Konda Techs., Inc.*, 618 F. Supp. 3d 873,  
11 886 n. 7 (N.D. Cal. 2022) (NDA could not form the basis of any breach of contract  
12 or confidentiality claim that occurred after the contract expired). Here, Cox does  
13 not and cannot allege that the confidentiality provisions at issue were still in effect  
14 when the alleged conduct took place. That is fatal because a party cannot breach a  
15 contract provision that has expired, and uncontested facts—within the pleading  
16 itself—show that is the case. Because Cox fails to show that it is plausibly entitled  
17 to relief based on the disclosure of the MoCA standards, its claim necessarily fails.

18 **2. Cox has not plausibly alleged any specific acts by Entropic  
19 designed to induce MaxLinear to breach its confidentiality  
20 obligations.**

21 Beyond the expiration of the relevant contract provision, Cox’s claim also  
22 fails because there are no allegations of any specific acts by Entropic to induce  
23 MaxLinear’s alleged conduct. Cox argues that its Counterclaims sufficiently “aver”  
24 Entropic was aware of the confidentiality of the MoCA documents and  
25 affirmatively sought their disclosure from MaxLinear. *See* Opp. Br. at 16 (citing DE  
26 266-1 ¶¶ 561, 568–69). However, the paragraphs Cox cites do not contain any such  
27 allegations.

1 Paragraph 561 vaguely alleges that “in the course of negotiating the lengthy  
2 and complex Patent Purchase Agreement, Plaintiff learned of and was informed of  
3 the MoCA standards.” Countercl. ¶ 561. Paragraph 568 alleges that [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED] Finally, Paragraph 569 alleges that “[REDACTED]  
7 [REDACTED], Plaintiff obtained

8 copies of the otherwise confidential MoCA standards and has relied on those  
9 clearly marked confidential material to which it should not have had access to  
10 prepare and send its correspondence in 2022 to Cox and to prepare and bring this  
11 suit.” *Id.* ¶ 569. Nowhere are there allegations that “Entropic was aware of the  
12 confidentiality of the MoCA documents” or that Entropic “affirmatively sought  
13 their disclosure from MaxLinear” despite first having such knowledge. Absent such  
14 allegations, Cox cannot plead a claim for inducement related to the alleged breach  
15 of confidentiality.

16 The only other fact Cox argues in support of its Counterclaim is that the  
17 documents in question are stamped “MoCA Confidential.” *See* Opp. Br. at 16. But  
18 all this shows is that, at most, Entropic would have become aware of the  
19 confidential marking of the documents *only upon receiving the documents*. It does  
20 not lend any credence to Entropic being aware of the confidential nature of the  
21 documents prior to their disclosure, let alone that Entropic induced MaxLinear to  
22 violate confidentiality obligations.

23 Cox cites case law that broadly stands for the point that interference does not  
24 have to be the defendant’s primary motive. *See Moore v. Apple, Inc.*, 73 F. Supp. 3d  
25 1191, 1203 (N.D. Cal. 2014). While that is true, it misses the point. Cox must still  
26 plausibly allege that Entropic “knew that the interference was certain or  
27 substantially certain to occur as a result of its action.” *Kor. Supply Co. v. Lockheed*

1 *Martin Corp.*, 131 Cal. Rptr. 2d 29, 45 (2003). The three paragraphs of the  
2 Counterclaims cited above do not come close to meeting this standard. All they  
3 show is that Entropic received the documents in question and that the documents  
4 were stamped “confidential.” Therefore, Cox has not sufficiently pleaded tortious  
5 interference based on the alleged breach of confidentiality obligations.

6 **D. The confidentiality claims do not “depend[] on the resolution of a  
7 substantial question of federal patent law.”**

8 Finally, to the extent the Court finds that Cox has sufficiently pleaded  
9 tortious interference based only on the alleged disclosure of confidential  
10 information, the claims must be dismissed for lack of subject matter jurisdiction  
11 pursuant to Rule 12(b)(1). This claim is not a federal question, and the Court lacks  
12 supplemental jurisdiction because the claim does not “depend[] on the resolution of  
13 a substantial question of federal patent law.” *Fortinet, Inc. v. Forescout Techs., Inc.*,  
14 No. 20-cv-03343-EMC, 2021 WL 5565836, at \*18 (N.D. Cal. Nov. 29, 2021)  
15 (citing *Additive Controls & Measurement Sys., Inc. v. Flowdata, Inc.*, 986 F.2d 476,  
16 477–78 (Fed. Cir. 1993)).

17 Whether MaxLinear improperly disclosed confidential MoCA documents  
18 does not depend on patent law at all, much less on “resolution of a substantial  
19 question of federal patent law.” *See Fortinet*, 2021 WL 5565836 at \*18. The only  
20 connection Cox points to between the confidentiality claims and the underlying  
21 patent infringement suit is a (false) assertion that Entropic would not have been able  
22 to bring this suit but for its access to the MoCA documents. *See* Countercl. ¶ 569.  
23 But what claims might arise from some document is not connected with the  
24 propriety of obtaining the document.

25 Realizing the danger, Cox also argues that the confidentiality claim arises  
26 from the same case or controversy as the other tortious interference claims. *See*  
27 Opp. Br. at 29. Cox misapplies the law. The confidentiality claim must be

1 connected to the federal claim directly, not indirectly. It is not sufficient to be  
2 connected only to one of the other state claims. There is no “chain rule” of  
3 supplemental jurisdiction. Cox’s other tortious interference claims at least relate to  
4 the assignment of patents and thus plausibly implicate issues unique to patent law.  
5 But the same cannot be said for the confidentiality claims, which must be dismissed  
6 for this jurisdictional reason as well.

7 **III. CONCLUSION**

8 For the foregoing reasons, Entropic respectfully requests that this Court  
9 dismiss Cox’s Amended Counterclaims that Entropic tortiously interfered with the  
10 MoCA IPR Policy (Count III) and that the patent assignments from MaxLinear to  
11 Entropic are void (Count II), with prejudice.

12 Dated: March 15, 2024

**K&L GATES LLP**

13 By: */s/ Rachel Berman*

14 Christina Goodrich (SBN 261722)  
15 Cassidy T. Young (SBN 342891)  
16 K&L Gates, LLP  
17 10100 Santa Monica Boulevard,  
18 8<sup>th</sup> Floor  
19 Los Angeles, CA 90067  
Telephone: (310) 552-5000  
Fax: (310) 552-5001  
christina.goodrich@klgates.com  
cassidy.young@klgates.com  
rachel.berman@klgates.com

20 James A. Shimota (*pro hac vice*)  
21 70 W. Madison Street, Ste 3300  
22 Chicago, Illinois 60602  
23 Telephone: (312) 807-4299  
Fax: (312) 827-8000  
jim.shimota@klgates.com

24 Peter E. Soskin  
25 4 Embarcadero Center, Ste 1200  
26 San Francisco, CA 94111  
Telephone: (415) 882-8220  
peter.soskin@klgates.com

27 ***Attorneys for Plaintiff, Entropic  
Communications, LLC***

## **CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Plaintiff Entropic Communications, LCC, certifies that this brief contains 3,982 words, which complies with the word limit of L.R. 11-6.1.

Dated: March 15, 2024

K&L GATES LLP

By: /s/ Rachel Berman

Christina Goodrich (SBN 261722)  
Cassidy T. Young (SBN 342891)  
K&L Gates, LLP  
10100 Santa Monica Boulevard,  
8th Floor  
Los Angeles, CA 90067  
Telephone: (310) 552-5000  
Fax: (310) 552-5001  
[christina.goodrich@klgates.com](mailto:christina.goodrich@klgates.com)  
[cassidy.young@klgates.com](mailto:cassidy.young@klgates.com)  
[rachel.berman@klgates.com](mailto:rachel.berman@klgates.com)

James A. Shimota (*pro hac vice*)  
70 W. Madison Street, Ste 3300  
Chicago, Illinois 60602  
Telephone: (312) 807-4299  
Fax: (312) 827-8000  
jim.shimota@klgates.com

Peter E. Soskin  
4 Embarcadero Center, Ste 1200  
San Francisco, CA 94111  
Telephone: (415) 882-8220  
[peter.soskin@klgates.com](mailto:peter.soskin@klgates.com)

*Attorneys for Plaintiff, Entropic Communications, LLC*

**CERTIFICATE OF SERVICE**

Case No. 2:23-cv-01047-JWH-KES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: K&L GATES LLP, 10100 Santa Monica Boulevard Eighth Floor, Los Angeles, CA 90067.

On March 15, 2024, I served the document(s) described as:

- **DECLARATION OF RACHEL BERMAN IN SUPPORT OF PLAINTIFF ENTROPIC'S APPLICATION TO FILE DOCUMENTS UNDER SEAL REGARDING REPLY IN SUPPORT OF MOTION TO DISMISS COX DEFENDANTS' COUNTERCLAIMS**
- **ENTROPIC COMMUNICATIONS, LLC'S REPLY IN SUPPORT OF MOTION TO DISMISS COX DEFENDANTS' AMENDED COUNTERCLAIMS PURSUANT TO RULE 12(b)(6)**

on the interested parties in this action by delivering a true copy thereof as follows:

<p><b>Kilpatrick Townsend and Stockton LLP</b></p> <p>Mitchell G. Stockwell mstockwell@kilpatricktownsend.com</p> <p>Christopher S. Leah cleah@kilpatricktownsend.com</p> <p>Courtney S. Dabbiere cdabbiere@kilpatricktownsend.com</p> <p>Michael J. Turton mturton@kilpatricktownsend.com</p> <p>Vaibhav P. Kadaba wkadaba@kilpatricktownsend.com</p> <p>Andrew N. Saul asaul@kilpatricktownsend.com</p> <p>1100 Peachtree Street, Suite 2800 Altanta, GA 30309-4530 Telephone: 404-815-6214 Fax: 404-541-3403</p> <p>April E. Isaacson aisaacson@kilpatricktownsend.com 2 Embarcadero Center, Suite 1900</p>	<p><i>Attorneys for Defendants</i></p> <p>Cox Communications, Inc.; CoxCom, LLC; and Cox Communications California, LLC</p>
--	---

1	San Francisco, CA 94111 Telephone: 415-273-8306 Fax: 415-354-3519	
2	Rishi Gupta <a href="mailto:rgupta@kilpatricktownsend.com">rgupta@kilpatricktownsend.com</a> Sarah Y. Kamran <a href="mailto:skamran@kilpatricktownsend.com">skamran@kilpatricktownsend.com</a> 1801 Century Park East Suite 2300 Los Angeles, CA 90067 Telephone: 310-310-7015 Fax: 310-861-0327	
3		
4		
5		
6		
7		
8		
9	<b>Morrison and Foerster LLP</b> Alex S. Yap <a href="mailto:Ayap@mofo.com">Ayap@mofo.com</a> Bita Rahebi <a href="mailto:Brahebi@mofo.com">Brahebi@mofo.com</a> Rose S. Lee <a href="mailto:Roselee@mofo.com">Roselee@mofo.com</a> 707 Wilshire Boulevard, Suite 6000 Los Angeles, CA 90017 Telephone: 213-892-5200 Fax: 213-892-5454	<i>Attorneys for Counter-Defendants</i> MaxLinear, Inc. and MaxLinear Communications LLC
10		
11		
12		
13		
14		
15		
16		
17	Bradley S. Lui <a href="mailto:Blui@mofo.com">Blui@mofo.com</a> 2100 L Street Nw, Suite 900 Washington, DC 20037 Telephone: 202-887-8766	
18		
19		
20		
21	Richard S. J. Hung <a href="mailto:Rhung@mofo.com">Rhung@mofo.com</a> 425 Market Street San Francisco, CA 94105 Telephone: 415-268-7000 Fax: 415-268-7522	
22		
23		
24		
25	<input checked="" type="checkbox"/> <b>BY ELECTRONIC SERVICE:</b> by transmitting a true copy of the foregoing document(s) to the e-mail addresses set forth as stated on the attached mailing list.	
26		
27		
28		

1 I declare under penalty of perjury under the laws of the United States of  
2 America that the foregoing is true and correct.

3 Executed on March 15, 2024, at Los Angeles, California.

4  
5 */s/ Rachel Berman*  
6 Rachel Berman

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28